IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

WRIT PETITION No. 7638 of 2005

Between:

Smt. R. Veeramma W/o. Late R. Danaiah, Aged 65 years
R/o. H.No. 10-3-95/6, Sy.No. 77, East Marredpally,

Paigah Village, Secunderabad.

..... PETITIONER

AND

The Municipal Corporation of Hyderabad,

Rep. by its Additional City Planner,
Secunderabad Division, Secunderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ more in the nature of Writ of Mandamus or any other appropriate writ order or direction declaring that the action of the Respondent in withholding the construction permission to petitioner in respect of premises No. 10-3-95/6 adm 970 sq. yrds in Sy.No.77, East Marredpally, Secunderabad, pursuant to petitioner's application dt. 12-8-2003, with a reason that a Layout approved in the name of D.E.N. Das, which was released vide permit No. 435/E/1961 dt. 21-12-1961, it is indicated as green belt and as per the G O Ms.No.229, M.A. dt. 16-4-1994, as it is the vested property of M.C.H. and M.C.H. is not in a position to grant any

building permission and that the impugned orders vide Letter No. 0797/CSC/TP7/03-3397 dt. 16-9-2004; 2) vide letter No.0797/CSC/TP7/03-3927 dt. 16-11-2004 & vide letter No. 0797/CSC/TP7/03-4390 dt. 22-11-2004 may be set-aside which is arbitrary and illegal and direct the Respondent to grant construction permission to petitioner as applied for in the application dt. 12-8-2003 in file No. 0897/CSC/TP7/03-3503 dt. 13-8-03 in respect of House No. 10-3-95/6 admeasuring 970 sq. yards in Sy.No. 77, Marredpally, Secunderabad and restrain the Respondent from interfering in the lawful possession of petitioner's premises and grant such other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.KANAKAMEDALA RAVINDRA KUMAR

Counsel for the Respondent: SMT.G.JYOTHI KIRAN

The Court, at the stage of admission, made the following :

ORDER:

The petitioner is the absolute owner and possessor of premises No.10-3-95/6 admeasuring 970 Sq. Yards situated at East Marredpally, Secunderabad covered by Sy. No.77, which is acquired by the petitioner by a Gift Deed Dated 27.3.1966 executed by the original landlord Mrs. Fareed Jhan Begum wife of Nawab Zahir Yar Jung vide document No.14331/1966. The site is consisting of an old house bearing Municipal No. 10-3-95/6. While so, on 12.8.2003, the petitioner submitted an application to the respondent herein for construction of multi-storied residential complex stilt with five upper floors in the said premises by enclosing a Banker’s Cheque bearing No.224718 of State Bank of India dated 9.5.2003 for a sum of Rs.73,149/-. It is further averred that on requisition from the General Manager (E), O & M, Division No.VII, Marredpally, Secunderabad, the petitioner also deposited Rs.1.50 lakhs towards the cost of laying water supply and sewerage lines and also Rs.1.50 lakhs to Hyderabad Metropolitan Water Supply and Sewerage Board. The petitioner submitted application on 12.8.2003 for the sanction of permission for construction of multistoried residential complex withy

five upper floors in 970 Sq. Yards area. On 14.10.2003, the petitioner made a representation to the respondent, but it was returned unapproved vide letter dated 6.7.2004 for the reason that the proposed site is ear-marked as open space, reserved for park in the approved layout, though the layout was approved in the year 1961 the petitioner approached after four decades claiming the park area as that of his own, as per the municipal records, the layout was approved in the name of one DEN Das and it was indicated as a green belt and in terms of GO Ms. No. 229 Municipal Administration dated 16.4.1994, it is vested property of the Municipal Corporation of Hyderabad. The petitioner again submitted another representation dated 27.7.2004 requesting the respondent to reconsider her application and to do justice to her by according permission for construction of apartment, which was also rejected, as the authorities did not find any grounds. The third representation was submitted on 25.10.2004 with a similar request, which also met with the same fate by letter dated 22.11.2004 addressed by the respondent. The petitioner filed several documents viz.,property tax receipts, House Tax notices, Assessment orders, Copy of the Town Survey, Survey Sketches, layout, Soil Investigation Report. During pendency of the applications before the respondent, the petitioner obtained documents from other departments to demonstrate that this land is part and parcel of the approved layout of 1961, but it is situated in Sy. No.77. Ultimately, the Corporation, on consideration of facts and circumstances of the case, has rejected the request of the petitioner by the impugned order. Aggrieved of the same, the present writ petition is filed.

In response to the rule nisi, the respondent – Corporation has filed counter affidavit disputing the ownership over the plot and it falls in Sy.No. 74/10, admeasuring the same land, shown as the land reserved for park in Sy. No. 74/10 by one late Dr. E.N. Dass in the layout approved by the Corporation in 1961 and by virtue of this sanction plans, the said piece of triangular land vests with the respondent – Corporation to be used as a public park and it has been

in possession of the respondent for more than 34 years. On considering the information furnished in the representations and calling for additional information, the respondent ultimately rejected the permissions vide impugned order, stating that all the land that was reserved in the layout submitted by Dr. E.N. Das, vests in the respondent – Corporation and no building permission can be granted to the petitioner over the said land. It is also stated that even if the case of the petitioner is believed, the petitioner came into possession in the year 1966 and the original layout was sanctioned in the year 1961.

In the backdrop of these facts, the learned counsel for the petitioner submits that the Revenue Authorities i.e. the District Collector and the Urban Land Ceiling Authorities issued certificate to the effect that the land is situated in Sy. No. 77 and, therefore, the rejection on the part of the respondent – corporation to grant building permission is illegal. Contending so, the learned counsel has placed reliance on a judgment of this court in W.P. No. 9135 of 1993. Therein, the petitioner has assailed the action of the respondents in withholding construction permission in respect of a plot and requiring him to produce a no-objection certificate from the Collector, Hyderabad District. The learned Single Judge has gone into the matter at length and held that the Municipal Corporation of Hyderabad, has no power to adjudicate upon the question of title of rival claimants for granting permission to make construction on the lands in question, but it has the power to make summary enquiry as to who among the rival claimants has prima facie title, though such a decision would not be binding on any one of the parties. It is further held that the Commissioner has power to call upon the party who applies for permission for construction under Sec. 428 read with Building Bye-Law No. 3.2, to produce the document of title, before considering the application for an applicants for construction.

The learned counsel for the petitioner further contended that there is no material available on record to show that the triangular land falls in Sy. No. 74/10, except the averments in the counter and therefore, it

cannot be said that the title of the petitioner over the said land of 970 Sq. yards is impaired. In support of his contention reliance is sought to be placed on a decision of this court in *Hyderabad Potteries Private Limited Vs. Collector, Hyderabad District and another()* wherein a learned Single Judge of this court has held that where an applicant has filed copies of registered sale deeds in proof of his title, clearance from Urban Land Ceiling Authorities and the earlier permission granted in respect of a portion of the very same land in question, the action of the Commissioner in refusing permission on the mere objection by the Joint Collector that the land belongs to Government, without any material in support of the said objection is illegal.

To appreciate the rival contentions, I have gone through the entire material available on record. Evidently, the averments of the gift deed show that the petitioner was gifted the property in the year 1966, but the averments of the counter show that the land of 970 Sq. Yards in . No. 10-3-95, East Marredpally, Secunderabads, falls in Sy. No. 74/10 and the triangular piece of land is reserved for park, in the approved layout vide permit No. 435/E dated 21.12.1961 and by virtue of this sanction, the land vests in the Respondent – Corporation, which is sought to be assailed at this length of time after lapse of more than 3 decades. Thus, both the parties, claim title over the said plot and evidently, there is title dispute, which cannot be adjudged by this court sitting under Article 226 of the Constitution.. The decisions relied on by the learned counsel for the petitioner can hardly be applied to the facts and circumstances of the case inasmuch as in *Hyderabad Potteries case,* the petitioner therein filed copies of registered sale deed in proof of his title and permission granted in respect of a portion of the very same land, in such circumstances, it was held that without there being any material in support of the version of the Joint Collector that the land belongs to Government, is illegal. There is no such contingency in the instant case. So also, with regard to the order dated 7.2.1994 made in WP No.9135 of 1993, by a learned Single Judge of this Court. It is true that the authorities of

Municipal Corporation of Hyderabad have no power to investigate into title of the property for granting building permission, but it is equally true that they have the power to make summary enquiry as to who among the rival claimants has a prima facie title, though such a decision does not bind any of the parties. This is exactly, why the respondent authorities have refused to grant permission for construction of a multistoried building with stilt, inasmuch as there is prima facie dispute with regard to title in respect of the site in question.

For these reasons, the relief sought for in this writ petition cannot be granted. Consequently, the writ petition fails and is accordingly dismissed. It is, however, open for the petitioner to approach competent Civil Court and get the title declared in her favour.

Elipe Dharma Rao, J.

June 15, 2005

MAS

To

1. The Additional City Planner,

Municipal Corporation of Hyderabad,
Secunderabad Division, Secunderabad.

2 2 CD copies

3) 1 CC to MR.VENKATARAMANA

*Form-NIC-OGS/WP{**VSMI**}*